UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:)
MACY'S, INC.,	<i>)</i>)
Employer,))) Case No. 1-RC-91163
and) case No. 1-Re-91103)
LOCAL 1445, UNITED FOOD AND COMMERCIAL WORKERS UNION,)))
Petitioner.	<i>)</i>))

BRIEF ON REVIEW FOR PETITIONER, LOCAL 1445, UNITED FOOD AND COMMERCIAL WORKERS UNION

The decision of the Acting Regional Director should be affirmed because the record demonstrates that the unit of all full-time and regular part-time cosmetics and fragrance employees in Macy's Saugus, Massachusetts store, including counter managers, is an appropriate unit for bargaining under the practice of the parties and traditional Board law, as well as under the Board's decision in *Specialty Healthcare & Rehabilitation of Mobile*, 357 NLRB No. 83 (2011). Macy's and Local 1445 have treated the cosmetics employees separately from other sales employees at the other unionized stores for purposes of collective bargaining. The cosmetics and fragrance employees are a readily identifiable group sharing a strong community of interest, with distinct functions and skills, separate supervision, separate work locations, and different commission arrangements. They do not work in other departments, and employees of other

departments do not work in cosmetics/fragrances. There is no significant interchange with other store employees. The cosmetics employees do not share any significant community of interest with employees in other selling departments. Accordingly, the Board should affirm the decision of the Regional Director, deny the employer's request for review and allow the ballots to be counted.

Summary of Evidence

Cosmetics employees have been treated separately for bargaining by Local 1445 and Macy's in other area stores. Local 1445 represents sales employees in five other Macy's department stores in Massachusetts. In the Boston, Peabody, Braintree, Belmont and Natick stores cosmetics employees are *excluded* from storewide selling units. (Petitioner's Exhibit 10) At the Warwick, Rhode Island store cosmetics employees had been excluded from a storewide selling unit until 2005, when they were separately organized in a Board conducted election. Thereafter a separate agreement was negotiated for the cosmetics employees, and the current agreement contains a separate appendix that provides significantly different terms and conditions for cosmetics employees. (RD 8; R. 111-116, Petitioner's Exhibit 1)

The approximately forty-one employees in the requested unit, collectively called "beauty advisors," (RD3) share <u>common supervision</u> by the cosmetics department manager, who has no responsibility for other departments (RD 4; UBr 3-4; ;R. 15).²

Nearly all of the cosmetics and women's fragrance employees work in a <u>common area</u> on the first floor of the store; the few men's fragrance employees are located in a defined

¹ There are separate commission rates, vacancies are filled with agreement of the vendors, different work week hours and work schedules vary. See Petitioner's Brief to the Regional Director at pp. 2-3.

² References to the transcript of the hearing are indicated by an "R." References to rhe Regional Director's Decision and Direction of Election are indicated by an "RD." References to the Union's brief to the Regional Director, appended hereto, are indicated by "UBr."

area on the second floor. (RD 3) Cosmetics are never sold in other departments (R. 125-126) The employees <u>hired by joint agreement</u> based on interviews by the manufacturers' representatives and Macy's based on what is best for the vendor and for Macy's. (RD 4; UBr 6; R. 53)

There are several major cosmetics vendors, each of which provides account executives and coordinators responsible for providing training and assistance for sale of their products. Macy's has account coordinator for each major product line who coaches employees of several stores who sell that product line. (RD 4)

There is <u>no temporary interchange</u> of employees between the cosmetics and fragrance department and other departments of the store, and <u>no permanent interchange</u>. In the past two years nine employees have transferred from other department to the cosmetics area, but there has been no permanent transfer of cosmetics employees to other departments.³ (RD 7; UBr 8-9)

Beauty advisors are trained by representatives of their respective advisors. (UBr 4-5)

Each beauty advisor in cosmetics has specialized relationships with individual customers. (RD 5; UBR 5-6) In addition to selling cosmetics, the beauty advisors provide individual facial "makeovers" on their customers, lasting up to 25 minutes. The customer is typically seated, while the beauty advisor applies toner, moisturizer, serum, eye cream, undertone and colors. Each customer's skin is unique. (R. 137-139) Each beauty advisor in cosmetics has hundreds of regular customers, known on a first name basis. (UBr 8) They keep records about each of their customers. (R. 123-123, 127, 135, 143) There was no evidence that sales employees in other departments apply products to their customers.

³ One cosmetics employee was promoted to a supervisory position in another department.

Cosmetics employees are paid an hourly wage by Macy's plus a 3% commission provided by the product line vendors, although the individual arrangements may vary.

(RD 5; R. 37) There is a counter manager for each product line, who is paid an additional one-half percent of the vendor's product line sales. If a cosmetics sales person sells a product of another cosmetics vendor the commission is 2 %. (R. 33,35) Cosmetics employees are reviewed annually by the department head based largely on the amount of cosmetics sales by the individual salesperson. (R. 163)

Most of the beauty advisors wear unique uniforms provided by the vendor of the product line they sell. (RD 5; UBtr. 5)

Conclusion

The decision of the Acting Regional Director should be affirmed because the parties have treated the cosmetics department separately for purposes of collective bargaining in other union stores. The cosmetics unit is appropriate under traditional Board law as well as under the Board's decision in <u>Specialty Healthcare</u>, <u>supra</u>.

Local 1445's position is more fully set forth in its Post-Hearing Brief to the Regional Director, which is appended. For the reasons set forth herein, in Local 1445's post-hearing brief and in the Regional Director's Decision and Direction of Election, the Decision and Direction of Election should be affirmed, the ballots counted and an appropriate certification issued.

Respectfully submitted,

LOCAL 1445, UNITED FOOD AND COMMERCIAL WORKERS UNION,

By its counsel,

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(617) 367-7200

Dated: December 18, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above document was filed electronically on the Board's E-filing System and that a copy was served upon counsel for the Employer by electronic mail to wjoy@morganbrown.com

Warren H. Pyle

Macy's Inc. and Local 1445, UFCW Case No. 01-RC-091163

Attachment to

Brief on Review for Petitioner, Local 1445, UFCW

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD FIRST REGION

In the Matter of:)
MACY'S, INC.,	<u>}</u>
Employer,))
and) Case No. 1-RC-91163
LOCAL 1445, UNITED FOOD AND COMMERCIAL WORKERS UNION,)
Petitioner.)

POST-HEARING BRIEF FOR PETITIONER, LOCAL 1445, UNITED FOOD AND COMMERCIAL WORKERS UNION

Local 1445, United Food and Commercial Workers Union seeks an election in a unit of all full time and regular part time beauty advisors and counter managers in the Cosmetics Department in the Saugus, Massachusetts store operated by Macy's, Inc., excluding MAC (Estee Lauder) employees, the department manager, executives and coordinators. The parties stipulated that counter managers are not statutory supervisors. (R. 109) The unit would also include those on call beauty advisors employed in the Saugus cosmetics department who satisfy the Board's rules regarding voting eligibility. (R. 9, 97) The employer's position is that only a store wide unit of all employees or all selling employees would be appropriate.

For the reasons set forth herein the Union has demonstrated that the petitioned for unit is <u>an</u> appropriate under traditional departmental unit law, as well as under the Board's decision in Specialty Healthcare.

Statement of Relevant Facts

Macy's operates a number of department stores in Massachusetts and Rhode Island. In the stores where Local 1445 represents employees, the cosmetics departments have been treated separately from other departments in the stores. The cosmetics departments are *excluded* from storewide units represented by Local 1445 in Macy's department stores in Peabody, Braintree, Belmont, Natick (see Petitioner's Exh. 1) and Boston (Petitioner's Exh. 2).

Petitioner's Exhibit 1, the agreement covering Peabody, Braintree, Belmont and Natick also covers the Warwick Rhode Island store. At Warwick the cosmetics department had been excluded from a storewide unit until there it was separately organized by Local 1445 by virtue of an election in 2005. (R. 113) Thereafter a separate agreement was negotiated by Local 1445 for the Warwick cosmetics departments. The current agreement covering Warwick contains a separate appendix providing a number of significantly different terms and conditions for cosmetics employees. (Union Exhibits 1 and 2; R. 111-116) The Warwick agreement provides:

- A. Separate commission rates for the cosmetics employees, 3%, different from commissions paid other departments. See Article IX (C): various basic commission rates for men's shoes5%, big ticket 6.5 or 7%, men's clothing and men's shoes 7.15%. Cosmetics beauty advisors are paid hourly wages plus 3% and 2% for sales on vendor lies other than their own. (Exhibit A, para 4(B))
- B. In filling vacancies "acceptability to interested parties" (a reference to the product line vendor representatives) is to be considered. Exhibit A, para. 2.
- C. Separate days off provisions for vendor promotional events and inventories. (Para. 3)
- D. Different work week hours. (Compare Article VI with Exhibit A. para. 3.)
- E. Different seniority groups for layoffs: The cosmetics department is a separate seniority unit. (Exhibit C) In other departments the junior employee in the

department by classification is laid off first (Article X, para. 4), while in the cosmetics department the junior employee within the vendor line or fragrance bay is displaced (Exhibit A, para. C5)

- F. Work schedules vary. See Article VI(B) and compare Exhibit A, para. 3.
- G. Beauty advisors are not required to work outside the department where it would interfere with their ability to attend to customers. (Exhibit A, para, 7)

There are seven selling units in the Saugus store, including the cosmetics department, as well as a number of non-selling departments. There are about 150 selling and support employees in the store. (R. 13-14) The manager of each of the departments, including the cosmetics manager have been excluded by stipulation. (R. 11, 24)

Separate Supervision. The cosmetics department at Saugus includes about 41 employees, some of whom are on call employees. (R. 14) The manager of the cosmetics department is Kelly Quince. She did not testify at the hearing. (R. 23) Ms. Quince monitors the operations of the department, (R. 24) but has no responsibility for other departments of the store. (R. 15) Other department managers could be involved with the cosmetics department only if Ms. Quince is on vacation or on a day off (R. 25), but it is clear from the record that they would not be familiar with the details of the operations in the several areas of the cosmetics department. The department's annual sales are about seven million dollars, five million cosmetics and two million men's and women's fragrances. (R. 24)

Separate work areas. Cosmetics and women's fragrance sales take place in a single compact area on the first floor. The men's fragrance area is in a small area on the second floor. (Employer Exh. 1) Cosmetics are never sold in other departments. (R. 125-126)

Cosmetic sales in one of the bays in the department – between Lancome and women's fragrances — are made by MAC employees, who sell Estee Lauder products. They are employees of Estee Lauder, paid by Estee Lauder and are not Macy's employees. It is as if there were a Lord & Taylor department in the store. If a Macy's beauty advisor makes a sale of MAC/Estee Lauder cosmetics no commission is paid. (R. 66-67, 100-101, 154-155)

The first floor cosmetics area includes separate bays for the major cosmetic brands where counter managers and beauty advisors work selling only their own vendor's product line. For example, in the Clinique bay there is a counter manager, three full time and two part time employees. (R. 131-132) Altogether there are hundreds of different brands. The major product lines are Clinique, Shiseido, Chanel, Lancome, and Origins. Each of these brands has a number of beauty advisors and a counter manager. There are also counter managers for the men's and for the women's fragrances. (R. 26) Each brand has a number of products, such as cleansers, repair, treatment, facial scrubs, color products, eye shadow, lipstick, liner, foundation, concealer and mascara. (R. 17, 47-48) And each item will have hundreds of different colors and different intensities. (R. 32-33, 48)

Specialized training by product vendors. Each major cosmetics vendor provides regular training for beauty advisors selling their product line. Training takes place in the store (R. 122) and at other Macy's stores or other locations, where beauty advisors from other Macy's stores and non-Macy's stores beauty advisors are also trained. (R. 120-122, 138) New products, how to sell them, what they do, how the customer should use them with other vendor products, and other vendor specific sales are discussed. Each vendor

provides is own new product manuals and other information to assist the beauty advisors in selling. (R. 120-122, 129, 137)

Distinctive uniforms. Each of the major cosmetic vendors provides distinctive uniforms for the counter managers and beauty advisors who sell their product line, (R. 132-133, 138) The beauty advisors are responsible for cleaning and maintaining their own uniforms on their own time. (R. 132-134)

Most beauty advisors specialize in one vendor's products. The counter managers and the beauty advisors normally work in only their one vendor product line. (R. 27-28, 47) Beauty advisors normally sell a specific vendor's products year in and year out. (R. 47) The beauty advisor may participate in periodic inventories outside her own area but only outside regular hours and when overtime wages are paid. (R. 126-127)

Beauty advisors in the fragrance areas sell hundreds of separate fragrances from various manufacturers. (R. 102-103)

Specialized relationships with individual customers. Each beauty advisor has own regular customers who are known on a first name basis. (R. 135) The two beauty advisors who testified have as many as 200 to 400 of their own regular customers. (R. 123-125, 143) The beauty advisors keep information about each customer purchases. (R. 123-125) They keep customers advised of new products and free gifts. (R. 127) Customers have the beauty advisors' business cards and look to their beauty advisor for advice and suggestions and new products. (R. 48)

Beauty advisors sell products to their customers. Frequently they service their customers by providing "makeovers," lasting as long as 25 minutes. The customer is typically seated, while the beauty advisor applies toner, moisturizer, serum, eye cream,

undertone and colors. Each customer's skin is different and requires unique applications.
(R. 137-139)

On call employees. There are about 7 on call employees in the Cosmetics

Department. They may be asked to work in any of the vendor lines or the fragrance areas,
but not in other departments of the store outside the cosmetics department. (R. 97) They
are paid a commission of 2%, rather than the 3% paid regular beauty advisors and counter
managers. (R. 57, 79)

Work only in their own department. The beauty advisors are not scheduled or asked to work in other departments. (R. 50-51) And they are not scheduled to work in other cosmetic product lines (R. 52), although they may do so if there is no one to help the customer. But their own product line is their "home." (R. 52) The beauty advisor may participate in periodic inventories outside her own area but only outside regular hours and when overtime wages are paid, (R. 126-127)

Product vendor representatives and Macy's supervision jointly decide on hiring new beauty advisors. Candidates for beauty advisor positions are interviewed both by a representative of the product line and by a Macy's representative. They confer about the candidate and consider those who are best for both the vendor and Macy's. (R. 53)

Beauty advisors who work in the fragrance areas are interviewed and hired by Macy's. (R. 78-79) If an on call employee is considered for a regular part time or full time position the vendor representative for the particular product line, as well as Macy's personnel would interview the candidate. (R. 80)

Separate commission arrangements. The counter managers' responsibilities include monitoring their specific brand coaching the sales personnel in the area, as well

as selling the product line. (R. 26) They are paid a base rate plus 3% commission on their own sales, as well as a 1/2% commission on all sales within their vendor product area.

(R. 61-63) They are not involved in discipline, (R. 65)

Each major brand has a designated executive who is responsible for the product line in a number of Macy's stores. They monitor the business of their respective product line, make sure that they are adequately supplied. (R. 28-29) There is also, for each major product line, a coordinator employed by Macy's to work with the executive and the department manager for cosmetics departments in a number of stores. (R. 28-31) The coordinators, who are employed by the vendors, provide training, both in the store and elsewhere, including at other Macy's stores, as needed. (R. 32)

Beauty advisors normally sell a specific vendor's product year in and year out. (R. 47) The beauty advisor may participate in periodic inventories outside her own area but only outside regular hours and when overtime wages are paid. (R. 126-127)

Special commission rates with commissions paid by vendors. The beauty advisors and counter managers are paid an hourly wage, plus a commission of three percent of sales they make. Fragrance counter employees are paid the same 3% commission. (R. 37) Counter managers make the same percentage of sales they make, plus an additional one-half percent of total sales of their vendor product line in the department. (R. 33) The commissions are generally paid by the vendor of the product line, though the individual arrangements may vary. (R. 33-34) If a cosmetics employee makes a sale of an item in another vendor product line when, for example there is no one in the other product line available, a 2% commission is paid by the vendor. (R. 33, 35) Some other departments in the store pay commissions, including fine jewelry, men's shoes, big ticket items and

furniture. However in each of those areas the salesperson sells a variety of manufacturers' products, and it is not clear whether the commission or bonus is paid by the manufacturer or by Macy's. (R. 103) No commission is paid for inventory work. (R. 127)

In the fragrance areas there are "sprayers" employed by vendors of the major product lines and not by Macy's. They are not in the unit sought here. (R. 42) They recruit customers, provide samples and the Macy's fragrance employee makes the sale and earns the commission. If there is no sales employee available to finish the sale the commission is allocated among all vendor sales persons. (R. 38-41) The sprayers are paid an hourly wage by their vendors.

Occasionally a vendor will have a special event and provide several makeup artists whom they pay an hourly wage to work with a number of customers at once. The Macy's employees in the product line receive the commission. (R. 42-43)

Macy's attempts to satisfy customers by permitting a product from one department to be paid for in another (R. 36) but they "don't like to make a habit of it." Because of possible loss of commission (R. 37) though there was no evidence as to how often that happens with cosmetics. (R. 36) But employees from the cosmetics department testified that cosmetics are never rung up in other department. (R. 125-126)

No temporary or permanent interchange with other departments. There is no meaningful interchange between beauty advisors and counter managers and employees in other departments. There are no temporary transfers. Cosmetic employees are not scheduled to work in other department of the store, and employees from other departments are never scheduled to sell cosmetics. (R. 94) In the past two years there have been about seven employees from other departments who have applied for and been

transferred to beauty advisor positions. (R. 80-83, 84, 97-98) These employees remained permanently in the cosmetics department. But there have been no transfers of beauty advisors to other employee sales positions in other departments of the Saugus store. One beauty advisor was promoted from men's fragrances to a statutory supervisory position as a floor supervisor. (R. 83, 98)

Store departments take periodic inventories and cosmetic employees have on occasion worked additional hours — at the premium overtime rate — to earn extra money working on inventories in other cosmetic areas. (R. 90-93) The store manager was not aware whether commission is paid for inventory work, but this seems unlikely, as no products are sold. (R. 93)

Separate evaluations by department head. Macy's conducts annual performance appraisals. (R. 156) There is a corporate form for employee evaluations, but there is a separate page used for beauty advisors and counter managers. (See pages2 and 3 if Employer Exhibit 3; R. 161) The beauty advisors are evaluated by the cosmetics department head. (R. 161-162) Merit increases are based in part on the evaluation. There is a separate production goal for employees in each department of the Saugus store. The primary factor in determining merit increases in the cosmetics department is the amount of the employee's sales. (R. 163)

There are some insignificant similarities between the beauty advisors and employees from other departments: they enter the store by the same door as all employees and supervisors, use the same break room and there is a single employee handbook for the store. Employee benefits are common among all store employees. (R. 84-85, 94-95)

There are regular store wide meetings of employees as well as meetings of all employees in particular departments, where matters of concern to the department are discussed. (R. 88-90)

Argument: An Election Should be Directed in the Requested Unit.

The Board has traditionally found departmental units appropriate for bargaining on a case-by-case basis without applying strict tests. The relevant factors include (1') differences in skills, (2) differences in training, (3) degree of common supervision, (4) interchange with other employees, and (5) differences in types of performance ratings. [copy cites from n. 136] The Board has frequently found appropriate department units in retail stores: *See, e.g.,* Wickes Furniture, 231 NLRB 154, 95 LRRM 1545 (1977) (selling employees); J.C. Penney Co., 196 NLRB 708, 80 LRRM 1071 (1972) (automotive service department employees); Arnold Constable Corp., 150 NLRB 788, 58 LRRM 1086 (1965) (selling, office, and restaurant employees). *But see* Beco Stores, 197 NLRB 1318, 80 LRRM 1493 (1972) (separate unit for nonselling employees held inappropriate). But a separate unit of warehouse employees is less likely to be approved in the retail industry than in a wholesale operation. *Compare* Roberds, Inc., 272 NLRB 1318, 117 LRRM 1465 (1984) and Salem Furniture Co., 272 NLRB 1321, 117 LRRM 1467 (1984), with NLRB v. Great W. Produce, 839 F.2d 555, 127 LRRM 2662 (9th Cir. 1988).

Here the cosmetic employees are a separate, readily identifiable unit, are separately supervised and have unique skills. They work in separate areas. Each cosmetic vendor's area operates separately from the remainder of the store, as is seen in the case of the MAC/Estee Lauder area, which is separately operated by the vendor, with its own employees. They have a different compensation arrangement, a base salary or hourly

wage plus a commission paid by the product vendor. They have unique skills and techniques in helping their own customers select the particular combination of cosmetics that will best suit their desired looks. They specialize in their own product line. Each vendor provides unique training, some of which is at remote locations with their counterparts from other Macy stores and different retailers.

Decisions Prior to Specialty Healthcare

The Board has often found department units appropriate for bargaining. See, e.g. May Dept. Stores, 39 NLRB 471 (1942) (unit of shoe salesmen); May Dept Stores Co. v. NLRB, 326 U.S. 376 (1945) (unit of part of department store appropriate); Thalhimer Bros, 83 NLRB 664 (1949) (building service employees in a retail department store); Goldblatt Bros., Inc (Central Display), 86 NLRB 914 (1949) (unit of display installation employees, including window trimmers, interior trimmers and table top display men at 15 retail stores in Chicago area); Allied Stores of Ohio, d/b/a A. Polsky Co., 90 NLRB 1868 (1950) (unit of restaurant employees in a retail department store); Franklin Simon & Co., Inc. and Kays—Newport, Inc., 94 NLRB 586 (1951), and May Dept. Stores Co., Kaufman Div., 97 NLRB 1007 (1952) (beauty salon employees on separate floors of a retail department store); Foreman & Clark, Inc. 97 NLRB 1080 (1952) (unit of tailor shop employees at 9 retail department stores); Montgomery Ward & Co., Inc., 100 NLRB 1351 (1952) (office clerical employees at a department store); J. L. Hudson Co., 103 NLRB 1378 (1953) three departments, carpet workroom, cabinet and finishing workroom and upholstery & drapery workroom); A Harris & Co., 116 NLRB 1628 (1957) (warehouse employees at retail department store); Rich's, Inc., 147 NLRB 163 (1964) bakery unit at main retail department store); Loveman, Joseph and Loeb, Div. of City

Stores Co, 147 NLRB 1129 (1964) (alterations employees and drapery workroom; Allied Stores of New York, d/b/a Stern's Paramus, 150 NLRB 799 (1965) (separate bargaining units for selling, non-selling and restaurant employees); Arnold Constable Corp., 150 NLRB 788 (1965) (separate bargaining units for selling, office clerical and restaurant employees in a department store); Lord & Taylor, 150 NLRB 812 (1965) (same)

Bamberger's Paramus, 151 NLRB 748 (1965); (service employees in automobile center of retail department store in separate building); J. C. Penny Co., Inc., 196 NLRB 708 (1972) (same), Bonwit Teller, Inc., 159 NLRB 759 (1966) (unit of non-selling employees); RWDSU v. NLRB, 385 F.2d 301 (D.C.Cir. 1967), enfg. Saks & Co., 169 NLRB 682 (1966) (non-selling employees); Saks & Co. d/b/a/ Saks Fifth Ave., 247 NLRB 1047 (1980) (18 alteration employees in a retail department store)

Specialty Healthcare

In the Board's recent decision in <u>Specialty Healthcare and Rehabilitation Center</u> of <u>Mobile</u>, 357 NLRB No. 893 (2011) the Board found a unit of certified nursing assistants in a nursing home appropriate for bargaining. Reviewing its prior decisions, the Board said:

[W]hen employees or a labor organization petition for an election a unit of employees who are readily identifiable as a group (based on job classifications, departments, functions, work locations, skills, or similar factors), and the Board finds that the employees in the group share a community of interest after considering the traditional criteria, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that employees in the unit could be placed n a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that the employees in the larger unit share an overwhelming community of interest with those in the petitioner-for unit.

Slip op. at 12-13.

Other decisions since Specialty Healthcare have followed the historic trend of Board decisions finding less than a wall to wall unit appropriate: : Northrop Grumman Shipbuilding, 357 NLRB No. 163 (2011), reviewed in Huntington Ingalls, 358 NLRB No. 100 (August 14, 2012) (technical unit of employees involved in radiological control department where the separate department had specialized training and no interchange with other technical employees); DTG Operations, 357 NLRB No. 175 (2011) (rental service agents at a rental car company with separate supervision, different uniforms, distinct tasks with different qualifications and a separate incentive pay plan held appropriate); Home Depot U.S.A., Inc, 20-RC-067144 (November 18, 2011), review denied, May 31, 2012)on floor sales, excluding cashiers, receiving, phone center, bookkeeping, in home service and other employees); Nestle Dreyer's Ice Cream, 31-RC-0066625 (November 23, 2011), review denied, December 29, 2011 (maintenance employees, excluding production employees); Odwall, Inc., 357 NLRB No. 132 (December 9, 2011) (route service representatives), Northrop Rumman Shipbuilding, Inc. 357 NLRN No. 163, (December 30, 2010, reviewed, Huntington Ingalls Incorporated, 358 NLRB No. 100 (August 14, 20120) (technical employees in a radiological control department, excluding other technical employees); DTG Operations, Inc., 357 NLRB No. 175 (December 30, 2011) (rental service agents); Prevost Car U.S. d/b/a Nova Bus, 03-RC-071843 (February 17, 2012), review denied March 15, 2012 (assembler classification in manufacturing facility); The Nieman Marcus Group, Inc. d/b/a/Bergdorf Goodman, 02-RC-076954 (May 4 2012), review granted May 30, 2012 (women's shoes department); General Dynamics Land Systems, 19-RC-76743 (May 31, 2012), review

denied July 20, 2012 (material fielding team and retrofit mechanics excluding many other classifications).

Conclusion

The cosmetics department unit is an appropriate unit for bargaining under longstanding Board precedent. The Board should direct an election in the requested unit of all employees in the employer's cosmetics department at the Saugus Massachusetts store, including counter managers and on call employees who work in the cosmetics department and satisfy the Board's eligibility standards.

Respectfully submitted, LOCAL 1445, UNITED FOOD AND COMMERCIAL WORKERS UNION,

By its counsel,

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Dated: October 31, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above document was filed electronically on the Board's E-filing System and that a copy was served upon counsel for the Employer by electronic mail to wjoy@morganbrown.com

Warren H. Pyle